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No. 89-155

In the Supreme Court of the United States

OCTOBER TERM, 1989

MONTANA HORNER, PETITIONER

v.

UNITED STATES PAROLE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the United States Parole Commission correctly decided to continue petitioner on parole in 1981.

2. Whether petitioner validly waived his right to counsel at his parole revocation hearing in July 1985.

3. Whether the Parole Commission improperly relied on information that was allegedly withheld from petitioner.

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OPINION BELOW

The amended opinion of the court of appeals (Pet. App. 1-14) is reported at 870 F.2d 1489.

JURISDICTION

The judgment of the court of appeals was entered on June 20, 1989. A petition for rehearing was denied on July 11, 1989. Pet. App. 3. The petition for a writ of certiorari was filed on July 27, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In June 1976 petitioner pleaded guilty to narcotics charges in the United States District Court for the Western District

of Pennsylvania. He was convicted on one count of conspiring to distribute LSD and to possess LSD with the intent to distribute it, in violation of 21 U.S.C. 846, and one count of possessing LSD with the intent to distribute it, in violation of 21 U.S.C. 841(a)(1). He was sentenced to consecutive terms of five years' imprisonment on each count, to be followed by consecutive terms of two years' special parole on each count. On April 2, 1987, petitioner filed a motion for a writ of habeas corpus in the United States District Court for the District of Arizona. The district court denied that motion on November 16, 1987. E.R. 26, 170.[1] The court of appeals affirmed. Pet. App. 1-14.

1. The background of this case is set forth in the opinion of the court of appeals (Pet. App. 5-9) and the government's brief in the court of appeals (Gov't C.A. Br. 3-10). The district court imposed petitioner's original ten-year sentence on June 2, 1976. On April 16, 1978, after petitioner had served 26 months of that sentence, the United States Parole Commission ordered petitioner to be released on parole. The Commission ordered petitioner's parole term to begin immediately and expire on February 28, 1986. Pet. App. 5-6; Gov't C.A. Br. 3.

In May 1980, the Parole Commission reviewed petitioner's case under 18 U.S.C. 4211 (1982).[2] Petitioner's supervising probation officer recommended against early termination of parole, and the Commission's case analyst stated as follows:

> Satisfactory adjustment Because of SPT [special parole term] subject could be considered for early term of

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[1] "E.R." refers to the Excerpts of Record filed in the court of appeals.

[2] 18 U.S.C. 4211 (*repealed* effective November 1, 1987, *by* Sentencing Reform Act of 1984, Pub. L. No. 98-473, §§ 218(a)(5), 235, 98 Stat. 2027, 2031-2033, as amended by the Sentencing Reform Amendments Act of 1985, Pub. L. No. 99-217, § 4, 99 Stat. 1728) authorized the Parole Commission to order early termination of parole.

> *regular* parole. However, in view of the fact that he was serving 2 consec. 5 yr. sentences & we do not have much info on offense, recommend continuance another year. *Next year may term[inate] early to SPT.*

Pet. App. 6-7 (brackets in original). The Parole Commission accepted the case analyst's recommendation and continued petitioner under parole supervision. *Ibid.*; Gov't C.A. Br. 3.

In June 1980, this Court decided *Bifulco* v. *United States*, 447 U.S. 381. In *Bifulco*, the Court held that Section 406 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1265, 21 U.S.C. 846, does not authorize a sentencing court to impose a term of special parole upon a defendant who is convicted of conspiracy to manufacture or distribute a controlled substance. 447 U.S. at 387-401. As a result of that decision, the district court in November 1980 issued an order eliminating petitioner's special parole term. Pet. App. 6.

In June 1981, the Parole Commission again reviewed petitioner's case. Petitioner's probation officer, in recommending against early termination of parole, made the following comments:

> [Petitioner] has been making what appears to be a satisfactory adjustment under supervision. He still has a committed fine with a balance of $3,575.20. He has been making fairly regular payments on this fine. [Petitioner] is working steadily and reporting promptly and his attitude appears to be very good. We are not recommending early termination because of the fact that he does have a committed fine and it should be paid in full before supervision is terminated. . . . [Petitioner's] overall response to supervision has been very satisfactory because of his steady employment and regular payments on his committed fine and regular office visits. His attitude is very good.

Pet. App. 7.[3] The Commission's case analyst reviewed the probation officer's evaluation and made the following notation on June 9, 1981:

> [Guidelines] 3 [years within guidelines]. [probation officer] is recommending continued supervision due to committed fine. Everything else looks positive. One prior conviction. *Should respond to [probation officer] advising fine no reason to continue [and] will consider* early [termination] next year since [within guidelines]. Continue.

Id. at 8 (emphasis in original). The Parole Commission, without further comment, agreed with the recommendation of the case analyst and the probation officer, and thus continued petitioner under parole supervision. *Ibid.*

2. The Commission reviewed petitioner's parole status again in April 1982. At that time, petitioner's probation officer recommended that the Commission continue his parole because petitioner was a prime suspect in an ongoing narcotics investigation. The Commission agreed that, in light of that information, petitioner should remain subject to supervision. Pet. App. 10; Gov't C.A. Br. 4. The Commission's decision proved to be well founded.

While on parole, petitioner was managing a cocaine distribution ring that transported cocaine between Southern California and Pennsylvania. In April 1982, federal authorities brought petitioner's operation to an abrupt halt when they arrested his girlfriend in St. Louis as she was trying to close a cocaine sale. Once petitioner learned of his girlfriend's arrest, he stopped reporting to his probation officer and became a fugitive. Petitioner was later indicted

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[3] The probation officer also noted that, as a result of *Bifulco*, the district court had eliminated petitioner's special parole term. Pet. App. 7.

in the Eastern District of Missouri for conspiracy to possess cocaine with the intent to distribute it, in violation of 21 U.S.C. 846, and use of a telephone to facilitate a narcotics transaction, in violation of 21 U.S.C. 843(b). On September 1, 1982, as a result of petitioner's fugitive status and the pending indictment, the Parole Commission issued a parole violation warrant for his arrest. Pet. App. 10-11; Gov't C.A. Br. 4-5.

Several years later, on April 3, 1985, FBI agents arrested petitioner in San Diego. Petitioner agreed to have the outstanding Missouri indictment transferred to the Southern District of California. On June 15, petitioner pleaded guilty to a charge of conspiring to possess three ounces of cocaine with the intent to distribute it, in violation of 21 U.S.C. 846. Pet. App. 11; Gov't C.A. Br. 5.

The Parole Commission held an institutional parole revocation hearing on July 16, 1985, before petitioner's sentencing on the conspiracy charge. At that hearing, petitioner stated that he had distributed about 12 ounces of cocaine per month over a two-year period. Information given to the Drug Enforcement Administration by a confidential informant corroborated petitioner's admission. Based on that admission, the examiner panel determined that petitioner, during his parole term, had distributed approximately 5,634 grams of cocaine. As a result, petitioner's parole violation rated Category Seven under the applicable reparole guidelines. The panel accordingly recommended that the Commission revoke petitioner's parole and not reparole him since his mandatory release date would come before he reached the date on which he would be eligible for parole under the reparole guidelines. Gov't C.A. Br. 6-8.

The Regional Parole Commissioner agreed with the examiner panel's recommendation and ordered petitioner's parole revoked. While petitioner's parole status was on administrative appeal, the district court sentenced petitioner

on his cocaine conspiracy conviction. The Parole Commission ordered petitioner's parole case remanded for a special consideration hearing to take into account his new sentence. Gov't C.A. Br. 9.

At that hearing, petitioner asked the examiner panel to consider the amount of cocaine listed in the presentence report prepared for his recent sentencing, 71.85 grams of cocaine, as opposed to petitioner's earlier admission, which gave rise to the panel's calculation that petitioner had distributed more than 5,634 grams. The panel refused petitioner's request. Instead, it considered his earlier admission at the revocation hearing, together with the corroborating information given to the DEA. The panel therefore recommended that the Commission continue petitioner on parole until its expiration date. Gov't C.A. Br. 9.

The Regional Parole Commissioner agreed with this recommendation, and again ordered that petitioner remain on parole until expiration. The Commission's National Appeals Board affirmed that decision on petitioner's administrative appeal. Gov't C.A. Br. 9-10.

3. On April 2, 1987, petitioner filed a motion for a writ of habeas corpus in the United States District Court for the District of Arizona. Petitioner raised three separate claims: that the Parole Commission improperly denied him early termination of parole in 1981; that he had not validly waived his right to counsel at the parole revocation hearing in July 1985; and that the Parole Commission had improperly relied on information allegedly withheld from him. On November 16, 1987, the district court denied petitioner's motion without holding an evidentiary hearing. Pet. App. 4; E.R. 26, 170, 171.

4. The court of appeals affirmed. Pet. App. 1-14. The court first rejected petitioner's claim that the Parole Commission did not follow its own guidelines, set forth in 28

C.F.R. 2.43(e), in refusing to order early termination of his parole after receiving the probation officer's June 1981 report.[4] The guidelines expressly provide that the Commission "is not required to consider early termination of parole if there are case specific factors that caution against cessation of supervision." Pet. App. 9. Here, the record showed that "the trial judge intended that supervision of [petitioner] continue for four years *after* the Parole Commission terminated his regular parole," *ibid.*, although the intervening *Bifulco* decision required the district court to strike the previously imposed special parole term. Moreover, the Commission "was advised of

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[4] 28 C.F.R. 2.43 provides in pertinent part:

(e) **Early termination guidelines**: In determining whether to grant early termination from supervision, the Commission shall apply the following guidelines:

(1) Absent case-specific factors to the contrary, termination of supervision shall be considered indicated when:

* * * * *

(ii) A parolee originally classified in other than the very good risk category (pursuant to § 2.20) has completed three continuous years of supervision free from any indication of new criminal behavior or serious parole violation.

* * * * *

(2) Decisions to continue the parolee under supervision past the period indicated above may be made where case-specific factors justify a conclusion that continued supervision is needed to protect public welfare. Such case-specific factors may relate to the current behavior of the parolee (for example, a parolee whose behavior begins to deteriorate as the normally expected time for termination approaches) or to the parolee's background (for example, a parolee with a history of repetitive assaultive conduct or substantial involvement in large scale or organized criminal activity). In such cases, an additional period of supervision prior to termination of jurisdiction may be warranted.

the district court's concern that [petitioner] serve an extended period of time on parole on June 1, 1980 and June 1, 1981." *Id.* at 10.

Under these circumstances, the court of appeals determined that the Commission

> was free in the exercise of its discretion to continue [petitioner] on parole, notwithstanding his apparent "satisfactory adjustment under parole supervision," in light of the trial judge's determination that a long period of parole supervision was required because of the serious nature of the charged crimes.

Ibid. In other words, "[c]onsideration of the effect of the removal of the special parole requirement from [petitioner's] sentence on his complete rehabilitation was an appropriate case specific reason to continue [petitioner] on parole * * *." *Ibid.*

Second, the court of appeals dismissed petitioner's contention that he was denied the right to be represented by counsel at his parole revocation hearing in July 1985 as the result of coercion and misrepresentation by petitioner's case manager. After reviewing the record, which showed that petitioner "insiste[d] on proceeding without counsel," in spite of his attorney's earlier request to attend the hearing, the court concluded that petitioner's "insistence on proceeding without counsel constituted a free, knowing and intelligent waiver." Pet. App. 12.

Finally, the court of appeals rejected petitioner's claim that the Parole Commission "violated his statutory rights when it based its determination not to terminate his parole in 1982 on information which was not accessible to him," Pet. App. 13, and it rejected his claim that because the Commission failed to give him advance notice of that information before his July 1985 revocation hearing, petitioner is entitled to a new hearing.

Under 28 C.F.R. 2.55(c)(2) and (3), information considered at a parole hearing may be withheld from the prisoner if it contains "[m]aterial which would reveal a source of information obtained upon a promise of confidentiality" or if disclosure of the information might cause harm. Here, the court of appeals found, the record showed that "certain information was deleted from the probation officer's reports because it contained the identity of a confidential informant." Pet. App. 14. Accordingly, the court concluded that "[t]his material was properly deleted under 28 C.F.R. § 2.55(c)." *Ibid.*

Moreover, under 28 C.F.R. 2.34(f), "[t]he evidence upon which the rescission hearing is to be conducted shall be disclosed to the prisoner *upon request*, subject to the exemptions set forth at § 2.55" (emphasis added). In this case, the court of appeals noted that petitioner had not requested the material at issue until April 1985, four years after the Parole Commission made its decision. The court therefore held that petitioner was not entitled to a new revocation hearing. Pet. App. 13-14.

ARGUMENT

Because parole has been abolished in the federal system, the issues petitioner raises are of no continuing importance. In the Sentencing Reform Act of 1984, Pub. L. No. 98-473, §§ 218(a)(5), 235, 98 Stat. 2027, 2031-2033, as amended by the Sentencing Reform Amendments Act of 1985, Pub. L. No. 99-217, § 4, 99 Stat. 1728, Congress repealed the federal parole laws, effective as of November 1, 1987. The Sentencing Reform Act provides that the parole statutes and regulations will continue to apply to prisoners who committed crimes before November 1, 1987, but only until November 1, 1992. Pub. L. No. 98-473, § 235(b)(1)(A), 98 Stat. 2032. Consequently, the issues presented in this case

will be of diminishing importance over the next three years and of no importance whatsoever after that. For that reason, the issues raised by petitioner, which involve the administration of the federal parole system, do not warrant this Court's review.

1. Petitioner contends (Pet. 26-29) that the court of appeals erred in concluding that the original sentencing court's elimination of the special parole term, as required by *Bifulco*, is a "case-specific factor[ ]" under 28 C.F.R. 2.43(e) that supported the Commission's refusal to terminate parole in 1981. As the court of appeals pointed out, however, 28 C.F.R. 2.43(e)(1) and (2) expressly provide that the Commission "is not required to consider early termination of parole if there are case specific factors that caution against cessation of supervision." Pet. App. 9; see note 4, *supra*. Here, the record showed that "the trial judge intended that supervision of [petitioner] continue for four years *after* the Parole Commission terminated his regular parole," Pet. App. 9, although the intervening *Bifulco* decision required the elimination of the previously imposed special parole term. Indeed, the Commission "was advised of the district court's concern that [petitioner] serve an extended period of time on parole on June 1, 1980 and June 1, 1981." *Id.* at 10. Under these circumstances, the court of appeals correctly determined that the "[c]onsideration of the effect of the removal of the special parole requirement from [petitioner's] sentence on his complete rehabilitation was an appropriate case specific reason to continue [petitioner] on parole * * *." *Ibid.*[5]

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[5] Petitioner errs in suggesting (Pet. 28) that 28 C.F.R. 2.43(e)(2) defines the term "case-specific factors" to include only the parolee's "current behavior" or "background." Section 2.43(e)(2) provides that "case-specific factors may relate to the current behavior of the parolee * * *

2. Petitioner also renews his contention (Pet. 11-20) that he was denied the right to be represented by counsel at his parole revocation hearing in July 1985 as the result of coercion and misrepresentation by his case manager. A review of the record confirms that the court of appeals correctly rejected petitioner's fact-specific claim.

a. After FBI agents arrested petitioner in San Diego in connection with the outstanding narcotics indictment and the parole violation warrant, the Parole Commission scheduled a parole revocation hearing, which took place on July 16, 1985. On July 12, petitioner's attorney sent a let-

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or to the parolee's background * * *." See note 4, *supra*. The regulation's express terms thus do not so limit the Commission's consideration of case-specific factors. Moreover, a parolee's "background" may well include the particular procedural context surrounding his initial sentencing.

Petitioner contends alternatively that the court of appeals erred in upholding the Commission's decision because "[t]he Parole Commission did not consider the elimination of the special parole term." Pet. 29. The record refutes this claim. As the court of appeals noted, the probation officer "recommended against early termination of the parole term set by the Parole Commission [because petitioner had an outstanding committed fine] and [also] alerted that body that the four-year special parole term had been deleted because of the Supreme Court's opinion in *Bifulco*." Pet. App. 7. The case analyst, however, advised the Commission that the fine was not a valid reason to continue petitioner on parole. Pet. App. 9. And, the year before (1980), the Commission had considered terminating petitioner's parole so that he could begin his four-year special parole term. E.R. 88. Consequently, when the Parole Commission "agreed with the recommendation of the case analyst and the probation officer without comment," Pet. App. 8, the court of appeals reasonably concluded that the Commission continued petitioner on parole in 1981 because of the intervening elimination of the special parole term.

ter to an Assistant United States Attorney notifying him that defense counsel would be out of the country on the scheduled date for petitioner's hearing. That letter further advised the prosecutor that the hearing should be postponed in his absence:

> Because I am familiar with the case and the basis for the parole revocation my client Montana Horner and I feel it is imperative that I be present at any parole revocation hearing. It is mandatory under 18 U.S.C. 4214(c) that his hearing be conducted within 90 days, but I have spoke[n] with representatives of the Regional Office and indicated to them that my client would wish this hearing continued in order that I could be present. The hearing will be held and my client will have to request a continuance by himself, for I will be out of the country after today.

Pet. App. 11; E.R. 123.

On July 15, 1985, according to petitioner's account (which the district court and the court of appeals accepted), petitioner told the case manager that his attorney was out of the country. The case manager urged petitioner to proceed with the parole revocation hearing without counsel or "stay here in lockdown for two months until the parole hearing officers come back in September." Pet. App. 12. The case manager advised petitioner that "a guy often gets more time when he brings his attorney" and that if petitioner insisted on being represented by counsel, he would receive "a local Mexican attorney." *Ibid.* The case manager also told petitioner that he would be released on parole after serving an additional 24 to 36 months in confinement. After speaking to his lawyer's partner, the case manager advised petitioner that the partner had agreed that petitioner should proceed without counsel. The partner, however, had not told the case manager that petitioner should proceed with the hearing. *Ibid.*

The following day, July 16, the parole hearing examiner panel advised petitioner of his right to counsel and asked if he had had sufficient time to prepare for his case and confer with his attorney. The examiner panel then read defense counsel's July 12 letter to the Parole Commission, which it had recently received. The panel showed petitioner the letter and specifically asked him if he still wished to proceed without his attorney. Petitioner responded by "insist[ing] [that the examiners] go forth with the revocation hearing without his attorney present." E.R. 118; see *id.* at 64, 122; Gov't C.A. Br. 5-8.

b. Under these circumstances, the court of appeals, while sharply critical of the case manager's conduct, nonetheless correctly held that petitioner knowingly and voluntarily waived his right to be represented by counsel. The court concluded that "[t]he case manager's inappropriate and erroneous advice was sufficiently attenuated by the lapse of time, the special caution exhibited by the hearing examiners to determine whether [petitioner's] written waivers of counsel should be accepted, and [petitioner's] decision to proceed without his counsel notwithstanding his attorney's recommendation that he seek a continuance." Pet. App. 12-13. Indeed, the hearing examiners' questioning was specifically "aimed at allowing [petitioner] to express any reservations he had about waiving counsel." *Id.* at 13. Moreover, the record does not suggest (and petitioner does not argue) that any statement he made before the examiners was coerced or involuntary.[6]

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[6] Petitioner contends that "[t]he case manager's estimate of 24-36 months confinement was pivotal to [his] waiver of counsel * * *." Pet. 17-18. Petitioner, however, scarcely bared his soul to the case manager. As the court of appeals pointed out, petitioner had not told the case manager that "he was involved in distributing about twelve ounces of cocaine per month for a two-year period." Pet. App. 13. Accordingly, "[n]o misrepresentation occurred," *ibid.*, and petitioner could not have reasonably relied on the case manager's statement.

Nevertheless, petitioner claims that the court of appeals "had no basis to make the factual finding of dissipated taint and an effective waiver of counsel" where the record is "devoid of an evidentiary hearing." Pet. 13. Petitioner, however, did not raise this issue before the court of appeals, and he has therefore not preserved it for review. *E.g., United States* v. *Lovasco*, 431 U.S. 783, 788 n.7 (1977); *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970).

In any event, the record in this case rendered an evidentiary hearing unnecessary. Petitioner executed no fewer than three separate documents stating that he wished to waive his right to counsel, each of which confirmed that petitioner knowingly decided to make that choice. See E.R. 70; Gov't C.A. Br. 17. A summary of the revocation hearing further documented petitioner's considered decision. That summary noted that petitioner "has submitted the proper forms indicating he does not wish to request appointment of counsel, does not wish to have an attorney present for the revocation hearing, and has no voluntary witnesses." E.R. 118. The summary further noted that "this issue was discussed in detail with [petitioner] as we did have a copy of a letter from [petitioner's] attorney * * * wherein he indicated that he wished to be present for his client's revocation hearing." *Ibid.*[7] And the summary explained that "[i]n spite of the letter * * * [petitioner] insisted [the panel] go forth with the revocation hearing without his attorney present." *Ibid.* In light of this documentary record, there was no need for the court of appeals to remand the case for an evidentiary hearing. See *Widgery* v. *United States*, 796 F.2d 223, 224 (8th Cir. 1986).[8]

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[7] Petitioner conceded that the panel read the letter to him. See E.R. 64.

[8] Despite petitioner's suggestion, the affidavit he submitted in support of his motion for a writ of habeas corpus did not raise any material

3. Lastly, petitioner renews his contention (Pet. 21-26) that the Parole Commission violated 18 U.S.C. 4208(b) when it refused to terminate his parole in 1982 based on information supposedly inaccessible to petitioner, and that the Commission's failure to give him advance notice of such information before his July 1985 revocation hearing requires that he receive a new hearing.

Petitioner's claims are meritless. First, with respect to petitioner's challenge to the Parole Commission's failure to disclose information in 1982, 18 U.S.C. 4208(b)(2) requires that a prisoner be granted "reasonable access to a report or other document to be used by the Commission in making its determination," but this mandate does not apply to "any document which reveals sources of information obtained upon a promise of confidentiality," 18 U.S.C. 4208(c)(2), or to "any other information which, if disclosed, might result in harm, physical or otherwise, to any person," 18 U.S.C. 4208(c)(3). As both the district court (Gov't C.A. Br. 27) and the court of appeals determined, the govern-

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issue of fact warranting an evidentiary hearing. In that affidavit, petitioner stated that he agreed to waive counsel because the case manager had falsely given him the "impression" that his attorney's partner had said that petitioner "should now go to the parole hearing." E.R. 63-64. But as the court of appeals pointed out, the hearing examiners' "questioning was aimed at allowing [petitioner] to express any reservations he had about waiving counsel," and the examiners' "caution was both appropriate and sufficient, given that [petitioner] apparently was not willing to disclose the case manager's advice." Pet. App. 13. In fact, petitioner conceded in his affidavit that when he read defense counsel's July 12 letter at the start of the July 16 hearing, that letter "clearly sounded as if [petitioner] should not go to the Parole Commission * * *." E.R. 64. In this situation, the court of appeals could reasonably conclude that petitioner would have discussed the case manager's advice with the hearing examiners if he had had any doubts about his right to counsel, especially where the examiners had discussed that right with petitioner "in detail." E.R. 118.

ment properly withheld certain DEA documents from petitioner because they revealed the identity of a confidential informant, disclosure of which "might have resulted in harm to the informant." Pet. App. 14; see E.R. 52.[9]

Petitioner nonetheless asserts (Pet. 23-24) that the Parole Commission should have provided him with a summary of the information without disclosing the identity of the confidential informant. That claim rings hollow. The governing regulation makes clear that "[t]he evidence upon which the rescission hearing is to be conducted shall be disclosed to the prisoner *upon request* * * *." 28 C.F.R. 2.34(f) (emphasis added). And, as the court of appeals determined, petitioner did not request the documents until April 1985, four years after the Parole Commission made its decision. Pet. App. 13-14.[10]

Second, with respect to petitioner's principal claim that the Commission improperly withheld information used at the 1985 revocation hearing, the record shows that the Commission's limited use of the withheld DEA documents did not prejudice him. The Commission primarily relied on petitioner's own admissions to rate his offense; the Commission considered DEA documents only to the extent that they

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[9] The record shows that the Commission forwarded these documents to the DEA for processing under the Freedom of Information Act and the Privacy Act. The DEA was supposed to contact petitioner directly regarding disclosure of the documents. After petitioner initiated this habeas corpus action, the Commission obtained authorization and disclosed unredacted copies of the documents to petitioner. See Gov't C.A. Br. 27.

[10] Petitioner errs in contending (Pet. 24) that 28 C.F.R. 2.34 conflicts with 18 U.S.C. 4208. The regulatory requirement that a prisoner first make a request for specific information is consistent with the statutory mandate that the Commission provide a prisoner "reasonable" access to the information. See 18 U.S.C. 4208(b). Such a common triggering mechanism reduces unnecessary administrative costs. See also 18 U.S.C. 4203(a)(1).

corroborated petitioner's statements. See E.R. 127-128. Furthermore, by the time of the special parole revocation rehearing in December 1985, petitioner was already aware of the substance of those documents. See E.R. 41, 57, 64-65, 125, 127-128.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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